

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1970.02
COMPLAINT INVESTIGATOR:	Connie Rahe
DATE OF COMPLAINT:	October 22, 2002
DATE OF REPORT:	November 20, 2002
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	January 31, 2003

COMPLAINT ISSUES:

Whether the South Harrison Community Schools and the Harrison County Special Services Cooperative violated:

511 IAC 7-17-72 and 511 IAC 7-21-2(a) by failing to designate a single individual as the student's teacher of record (TOR) for more than two weeks at the beginning of the 2002 to 2003 school year, and with regard to the school's failure to assign an appropriately licensed or trained TOR upon the school discovering that the student did not have a TOR assigned.

511 IAC 7-27-7(d) by failing to ensure that the student's individualized education program (IEP) was no more than 12 months old.

511 IAC 7-29-1(l) by failing to follow the procedures required by IC 20-8.1-5.1-12 when suspending a student, specifically, regarding the school's temporary unilateral removal of a student with a disability from the student's current placement.

511 IAC 7-17-36 and 511 IAC 7-18-2 by failing to provide a free appropriate public education (FAPE) to the student by not providing special education and related services (according to the student's current IEP) until the parents provide written agreement with a newly developed IEP.

511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically, failing to provide occupational therapy to the student 3 sessions per month for 30 minutes per session.

FINDINGS OF FACT:

1. The Student is 5 years of age, is enrolled in kindergarten, and has been determined eligible for special education and related services under the category of autism spectrum disorder with communication disorder.
2. On August 6, 2002, the Student's TOR resigned and a general education teacher on a limited special education license (limited license) with autism training was hired as a replacement, but took another teaching position on September 30, 2002. The current TOR was hired on October 1, 2002, under an elementary education and kindergarten license, and the School applied for a limited special education license. The current TOR has 2 years of experience as an assistant in a resource room for students with special needs, received district training in autism by the means of a handbook and computer discs developed for training in autism spectrum disorder, and was enrolled in a training conference for autism

in November of 2002. An experienced and trained teacher mentor in the same building who formerly taught students with autism has been assigned to provide consultation to the TOR.

3. The CCC met May 21, 2002, to review and revise the IEP, dated September 13, 2001, with duration date of September 13, 2002. Goals and occupational therapy (OT) frequency of services were revised at the May 21 meeting, but the CCC agreed to reconvene in September 2002 to revise the objectives. The School contacted the Complainant in September 2002, scheduled a CCC meeting for October 1, and rescheduled the CCC meeting for October 21, 2002, when all required members could be present. A revised IEP has not been agreed to by the Complainant and the Student continues to have special education and related services provided based on the IEP dated September 13, 2001.
4. Notes in the CCC Report dated October 21, 2002, indicate that the Complainant refused to accept special education services, but agreed to certain related services. The Complainant was under the impression that special education services would no longer be provided until the Complainant provides a written agreement with the newly developed IEP. Immediately following the CCC meeting, the Complainant discussed this information with the Director and was informed that any suspension of services was not allowable. The Director acknowledges asking the Complainant to keep the Student home from school the next day so that he may confer with the special education staff and other personnel specifically involved with the Student to ensure there is no misunderstanding about the requirements of Article 7. As a result, the Student missed one day of educational services on October 22, 2002, and returned to school the next school day. The School did not formally suspend the Student and no written notice of the School's decision was provided. On October 22, 2002, the Director informed the Complainant by telephone that services from the previously agreed upon IEP would continue to be provided.
5. The IEP dated May 21, 2002, states that the Student will receive occupational therapy (OT) three times per month for 30 minutes per session. The Student received one consultation subsequent to the opening of the school year on August 13, 2002, the first direct session of OT on September 23, 2002, and three direct OT sessions in October 2002. The Complainant asserts that the Student has missed one OT session in August and 2 sessions in September. During the course of this investigation, it was also determined that the Student did not have the direct services of the TOR, as required in the Student's IEP, for approximately two weeks in the general education classroom while the second TOR was transitioning to another assignment, and for approximately two weeks of services by the third TOR while she prepared to assume the TOR teaching responsibilities between October 2 and 17, 2002.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School promptly hired a TOR to replace each resigned teacher, and provided the TOR with training, in keeping with the general requirements of 511 IAC 7-21-2(a) and specific requirements of 511 IAC 7-26-2 for autism spectrum disorder. But, Findings of Fact #5 indicate the services of a TOR were intermittently not available to oversee the provision of services in the IEP while the second TOR was transitioning out, and the third TOR was transitioning into the TOR staff position responsibilities. Therefore, violations of 511 IAC 7-17-72 are found.
2. Finding of Fact #3 indicates that the last signed IEP is dated September 13, 2001. Therefore, a violation of 511 IAC 7-27-7(d) is found.
3. Finding of Fact #4 indicates that the Student missed one day of school as a result of a request by the Director in order to resolve a misunderstanding involving a CCC disagreement. Finding of Fact #4 also

shows that the Student was not formally suspended. Therefore, although no violation of 511 IAC 7-29-1(l) is found, corrective action is required to assure this type of miscommunication does not recur.

4. Finding of Fact #4 indicates that the School failed to provide the Student special education and related services for one instructional day as a result of the Complainant fulfilling the Director's request to keep the Student home for a day. Therefore, a violation of 511 IAC 7-17-36 and 511 IAC 7-18-2 is found.
5. Finding of Fact #5 indicates that the Student was not provided the required number of OT sessions per month. Therefore, a violation of 511 IAC 7-27-7(a) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective actions based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The South Harrison Community Schools and the Harrison County Special Services Cooperative shall:

1. Convene the CCC to:
 - a. Determine whether, and to what extent, compensatory services are to be provided as a result of the failure to implement the Student's IEP as written, with reference to the delay in providing 3 OT sessions, and the lapse in direct services of a TOR in the general education classroom for approximately 4 weeks. The CCC's discussion and consideration of compensatory services shall be clearly delineated in the CCC report. A copy of the CCC Report/IEP shall be submitted to the Division within 5 days of the CCC meeting, but no later than December 20, 2002.
2. Send a written memorandum to all school case conference coordinators and special education teachers, stating the requirements of 511 IAC 7-17-72, with emphasis on each of the responsibilities of the TOR. A copy of the written memorandum and a list of signatures of those who received it shall be submitted to the Division no later than December 20, 2002.
3. Send a written reminder to all appropriate personnel regarding the requirements of 511 IAC 7-29-1 and IC 20-8.1-5.1-12 regarding the School's temporary unilateral removal of a student with a disability from the student's current placement. The memorandum shall include a reminder that such a removal constitutes a day of suspension when such a removal is not pursuant to or provided for in the student's IEP and that it is also a denial of FAPE. A copy of the written memorandum and a list of personnel to whom the memorandum was sent shall be submitted to the Division no later than December 20, 2002.